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## NOTES AND DOCUMENTS

### THE IOWA — MISSOURI DISPUTED BOUNDARY

On June 12, 1838, congress organized the territory of Iowa, composed of that part of what was then the territory of Wisconsin lying west of the Mississippi. It thus embraced all the land west of the Mississippi and north of the river and state of Missouri as far west as the White Earth river in the Dakota country.<sup>1</sup>

The new territory inherited a dispute with Missouri over boundary. In 1816, a surveyor named Sullivan had run an Indian boundary line from a point in the Missouri river opposite the mouth of the Kansas river one hundred miles north and then east to the Des Moines river. It was afterwards ascertained that his latter line did not run due east but north of east about two and one-half degrees. When Missouri was admitted as a state, congress made its northern boundary "the parallel of latitude which passes through the rapids of the River Des Moines, making said line to correspond with the Indian boundary line."<sup>2</sup>

In 1837, Missouri appointed a surveyor by the name of Brown to run the northern line of that state and he located it considerably north of the Sullivan line. The legislative assembly of Wisconsin territory, which extended to Missouri at that time, the territory of Iowa not yet having been organized, aroused by this proceeding, instructed the Wisconsin delegate in congress to endeavor to secure the appointment of a commission to determine the line. It was stated in the assembly that the Sullivan line had been accepted by Missouri without question until certain persons interested in lands of the Indian reservation lying between the Mississippi and the Des Moines claimed that the rapids which should determine the location of the line were in the Des Moines river farther north than the so-called Des Moines rapids in the Mississippi, and that this had led to the *exparte* survey

<sup>1</sup> *United States statutes at large*, 5: 235.

<sup>2</sup> *Ibid.*, 3: 545.

by Missouri by which she hoped to push her boundary farther north.<sup>3</sup>

The Wisconsin delegate succeeded in getting congress to authorize the president to have the boundary ascertained, surveyed, and marked between Missouri and Iowa, which had now been formed into a territory. Accordingly a commissioner was appointed by the president to act with commissioners from Missouri and Iowa, but the line determined upon was not to be established finally until ratified by congress. An appropriation of four thousand dollars was made to defray the expense.<sup>4</sup> The governor of Iowa appointed a commissioner to act with the federal commissioner but the governor of Missouri refused to appoint one.<sup>5</sup>

The report of the United States commissioner, Albert M. Lea, was sent to congress in a message by President Van Buren, December 24, 1839. Mr. Lea presented four possible lines for the boundary:

“First.—Sullivan’s line, which has in its favor the almost uniform reference to the point one hundred miles north of the mouth of the Kansas River as the northwest corner of Missouri. On the other hand, it is an oblique line and the law calls for a parallel of latitude. Moreover, it does not pass through any rapids of the Des Moines, and hence is not a legal line, though from its long use as such it might be proper to establish it by legislation.

“Second.—The parallel of latitude passing through the old northwest corner (of Missouri). It is not known whether this line passes through any rapids.

“Third.—The parallel passing through the Des Moines rapids in the Mississippi. The argument for this is that the rapids are the point of paramount importance in determining the boundary, . . . and that by general notoriety the rapids in the Mississippi were known by the name given in the description.

“Fourth.—The parallel passing through the rapids in the

<sup>3</sup> *Senate documents*, 25 congress, 2 session, 1: no. 63; Elizabeth H. Avery, *Some fragments of Iowa history gathered from the records of congress* (Iowa City, Iowa, 1894), 4; Benjamin F. Gue, *History of Iowa from the earliest times to the beginning of the nineteenth century* (New York, [1903]), 1: 193-194.

<sup>4</sup> *United States statutes at large*, 5: 248.

<sup>5</sup> *Senate documents*, 26 congress, 1 session, 4: no. 138; *House executive documents*, 27 congress, 2 session, 3: no. 141.

Des Moines near the Great Bend. This was the line surveyed by Brown in 1837."

The commissioner came to the conclusion "that the first line is equitable but not legal, the second is neither equitable nor legal, and that the third and fourth both fulfill the conditions of the law."<sup>6</sup> His report led to no settlement of the controversy.

In the meantime matters were getting warm in the vicinity of the disputed boundary, and President Van Buren sent a message to congress saying that the disagreement had produced such a state of excitement that he deemed it necessary to call their attention to it.<sup>7</sup> Missouri had organized a county north of the old Indian line; while the commissioners of Van Buren county, Iowa, had written to Governor Lucas, of that territory, saying that the authorities of Missouri had, "against the will and wishes of the people, assessed their property and endeavored to ascertain their views in relation to slavery. . . The firmness of purpose which your excellency evinced on a similar occasion in the disputed boundary of Ohio gives us reason to expect your earnest attention on this unfortunate occurrence."<sup>8</sup>

It was an interesting coincidence that Governor Lucas had been the executive of Ohio at the time of its quarrel with Michigan over boundary and that he should have been involved in two such animated and stubborn disputes.

It is also interesting to note that he now proceeded to take advantage of an act passed by the legislative council of Michigan against the encroachments of his own officers in the earlier disagreement. He issued a proclamation under date of July 29, 1839, directed against the Missouri officials in the disputed area, in which he says that an act originally passed by the legislative council of Michigan in 1835 to prevent the exercise of a foreign jurisdiction within the limits of the territory was adopted as a law of Wisconsin previous to the division of that territory and afterwards declared by congress to be in full force and effect in the territory of Iowa. This law provided that any person exercising any official function within the jurisdiction of the territory or any of its counties as then organized, by virtue of any

<sup>6</sup> *Senate documents*, 26 congress, 1 session, 1: no. 4; Avery, *Some fragments of Iowa history*, 4-5.

<sup>7</sup> *Senate documents*, 26 congress, 1 session, 1: no. 4.

<sup>8</sup> *Ibid.*

commission or authority not derived from that territory or the government of the United States, should be liable to a fine of not more than one thousand dollars, or imprisonment not exceeding five years at hard labor, or both. The governor declared this law to be in full force and effect in Iowa at that time, and he enjoined upon the various officials to be vigilant in protecting the inhabitants against foreign encroachments and to arrest all persons violating the above act.

The governor of Missouri replied in a proclamation authorizing the civil officers of his state to call upon the militia or other persons in arms to disperse any persons obstructing their work in the disputed area, and the militia was to be held in readiness to render assistance.<sup>9</sup> And thus the merry war of proclamations went on!

But the quarrel was not confined to paper. Two sets of civil officers came into conflict and the militia was called out on both sides.<sup>10</sup> The governor of Iowa informed the president, in the winter of 1839-1840, that "Missouri is embodying a military force to take possession of the district of country claimed by her," and that "the marshall of the United States has made requisition on the respective major generals of the territory for forces to enable him to enforce the laws of the United States and to repel an invasion of our territory by an armed force from Missouri. . . . The air of superiority assumed by the authorities of Missouri," he continues, "and the menaces of a few reckless characters near the line have created an excitement of feeling in the breasts of our citizens which, if intruded upon much farther, may burst out beyond the restraint of civil authority."<sup>11</sup>

From time to time President Van Buren sent messages to congress with communications and information relative to the dispute.<sup>12</sup> Under date of February 4, 1840, a committee in the house reported that if the northern boundary of Missouri were run as it is described in the act of 1820 defining boundaries, "it would take from her the strip of territory between a parallel of

<sup>9</sup> *Senate documents*, 26 congress, 1 session, 1: no. 4.

<sup>10</sup> See Negus, "The southern boundary of Iowa," in *Annals of Iowa*, October, 1866, and January, 1867.

<sup>11</sup> *Senate documents*, 26 congress, 1 session, 1: no. 35; *House executive documents*, 26 congress, 1 session, 3: no. 97.

<sup>12</sup> *Senate documents*, 26 congress, 1 session, 1: no. 4; 2: no. 35; 4: no. 138; *House executive documents*, 26 congress, 1 session, 3: no. 97.

latitude intersecting the center of the Des Moines rapids of the Mississippi and the old Indian line. But as the latter line so soon after the organization of the state was adopted for the state line and came to be generally so regarded by those interested in it and by the whole country, and so many municipal regulations have been made to conform to it as the true line, they have resolved to recommend its adoption." Accordingly a bill was reported fixing the boundary at the Indian line as run by Captain Sullivan in 1816 and providing for its survey and marking.<sup>13</sup> The bill did not get through, however, and others, both in the house and senate, a year later, also failed of passage.<sup>14</sup>

Again, in 1842, the committee on territories in the house made a report reviewing the whole subject. The committee recognized that the question, so far as the rights of Missouri were concerned, "is peculiarly for the judgment of the courts; but the authorities, both of the state and territory, have repeatedly referred it to Congress and besought its decision. The action of the National Legislature," continued the report, "cannot conclude Missouri, but it will be binding on Iowa." It recommended that "in consideration of the recognition of the Indian line as the state boundary in so many territorial regulations by Missouri and the General Government, and of the many serious difficulties that would result from the establishment now of the true line," the Indian boundary be adopted and confirmed as the divisional line between Iowa and Missouri.<sup>15</sup>

Congress seemed unwilling to pass such a bill, very likely doubting its power under the constitution to fix the boundary of Missouri after it had become a state. But in 1844 it provided for a second commission, one member of which was to be appointed by the governor of Iowa, one from Missouri and a third, not a citizen of Iowa or Missouri, to be appointed by the other two. The act was not to go into effect until the legislature of Missouri gave its assent and agreed to abide by the decision of the commission.<sup>16</sup>

"Iowa was willing to concede to this proposition," says Mr.

<sup>13</sup> *House reports*, 26 congress, 1 session, 1: no. 2.

<sup>14</sup> Thomas Donaldson, *The public domain; its history with statistics* (Washington, 1884), 438.

<sup>15</sup> *House reports*, 27 congress, 2 session, 4: no. 791; *ibid.*, 3 session, 4: no. 86.

<sup>16</sup> *United States statutes at large*, 5: 677.

Negus, "and the legislature of Missouri passed an act assenting to this mode of settling the difficulty, but the governor . . . placed his veto on the bill, and it failed to become law. The governor's objection to this mode of settling the difficulty seemed to be that it involved legal rights and should be adjudicated by a judicial tribunal."<sup>17</sup>

The legislatures of Missouri and Iowa now asked congress for a law authorizing them to commence a suit in the supreme court to settle the question.<sup>18</sup> Such an act was passed and a suit was commenced.<sup>19</sup>

Missouri claimed, in the bill that she filed, that the northern part of the state was obtruded upon and claimed by Iowa for a space of more than ten miles in width and about two hundred in length, and that Iowa was exercising jurisdiction over it contrary to the rights of Missouri and in defiance of her authority. Missouri disavowed the old Indian boundary and insisted that the line ought to run from the rapids in the Des Moines river instead of those in the Mississippi.

Iowa, by her cross-bill, alleged that Missouri treated the old Indian boundary as her true northern line until about 1836; that that line was at its western extremity about six miles north of the parallel of latitude which was the proper boundary, and about ten miles at its eastern end; that the parallel of latitude on which the boundary should run was to be found at the middle of the rapids in the Mississippi known as "the Des Moines rapids."

These rapids in the Mississippi begin about three miles above the mouth of the Des Moines river and extend up the river about fourteen miles. "It is a highly notorious geographical object," said the court, "and a very proper one to govern a national boundary; but the name called for in the act of Congress of 1820, and in the constitution of Missouri, is 'the rapids of the River Des Moines.' Then, and ever since, the great rapid in the Mississippi River has been known by a different name. It is therefore left uncertain whether the rapid in the Mississippi was the one referred to; and the obscurity is greatly increased

<sup>17</sup> Negus, "The southern boundary of Iowa," in *Annals of Iowa*, January, 1867, p. 788.

<sup>18</sup> *Ibid.*; *House executive documents*, 29 congress, 1 session, 4: no. 127.

<sup>19</sup> *United States statutes at large*, 9: 52.

by a most embarrassing disagreement among the witnesses testifying on this point."

Iowa's claim to a line as far south as the middle of this rapid in the Mississippi, said the court further, could be granted only upon a doubtful and forced construction of the act of congress assigning the boundaries of Missouri, and the court was unwilling to adopt that construction. On the other hand, the claim of Missouri could not be upheld, as there were no well-marked and named rapids in the Des Moines river where the line claimed by it was located.

But, continued the court, "there are, in all, fifteen Indian treaties referring to the Osage boundary of 1816, as run by Sullivan, each of which recognizes that boundary as the Missouri state line; and all of which treaties were made after Missouri was admitted into the Union, and before Iowa became a state. And as the treaties were drawn by the authority of the United States, they must be taken as the recognition, on the part of the General Government, that the Missouri boundary and the old Indian boundary are identical.

"From the time that Missouri became a state to this day, Sullivan's line has been recognized by the United States as the true northern boundary of Missouri, so far as it could be done through the department of public lands.

"And, thirdly, Congress, as early as 1834, organized a territorial government bounded by said line; laid off counties bounded by it on the south, as early as 1836; and governed the territory for ten years up to that line,—all the time recognizing it as the proper boundary of Missouri."

The court held, therefore, that the boundary between Missouri and Iowa was the old Indian line as run by Sullivan in 1816, and appointed a commission to run and mark it.<sup>20</sup>

When the commissioners undertook to carry out the decision of the court, they found that nearly all traces of the Sullivan line had disappeared. They experienced much difficulty in locating the old northwest corner of Missouri, but finally succeeded in doing so and marked it with an iron pillar. Sullivan's line was straightened in places, and the line as newly surveyed,

<sup>20</sup> *Howard's reports of decisions of the supreme court of the United States*, 7: 660 *et seq.* The opinion was handed down at the December term of 1848.



known as the Hendershott-Minor line, was marked by iron pillars and wooden posts. The expense, amounting to over ten thousand dollars, was shared equally by the two states. The report of the commissioners was accepted without objection by both parties and the boundary was established in conformity therewith.<sup>21</sup>

In the course of time, many of the posts marking the boundary became destroyed and disputes arose between individual land owners at first and then between the two states. The matter was again referred to the supreme court, which in February, 1896, issued a decree defining the boundary as the line run and marked by Hendershott and Minor in 1850, and appointing three commissioners to relocate and mark with durable monuments the obscure portion.

The commission secured an expert surveyor from the United States coast and geodetic survey to perform the necessary work. It was found that the line of 1850, which was supposed to be straight, contained many bends and changes of direction. The doubtful portion of the line, between the fortieth and sixtieth mile-posts, counting eastward, was ascertained and marked and confirmed as the boundary by the supreme court.<sup>22</sup>

CLAUDE S. LARZELERE

A few years ago the department of Indiana history and archives of the Indiana state library secured quite a collection of early manuscripts which had been collected by Mr. Charles B. Lasselle of Logansport. In this collection was found the following letter, which while not actually signed appears to be the original copy draft made by Governor Harrison, since the paper upon which it is written is contemporaneous with the date of the letter. The texture of the paper itself and the water marks make it very improbable that the copy was made at a later date. Because of its relation to the old northwest it seems worthy of being reproduced for the benefit of those interested in the history of this region.

HARLOW LINDLEY

<sup>21</sup> *Howard's reports*, 10:1; Negus, "The southern boundary of Iowa," in *Annals of Iowa*, January, 1867, pp. 789-793.

<sup>22</sup> United States coast and geodetic survey, *Annual report*, 1896, p. 51; *United States reports; cases adjudged in the supreme court* (New York, 1896), 160:688; *ibid.* (New York, 1897), 165; 118.

TO THE SECRETARY OF STATE JULY 7TH 1802

SIR

The mail which will carry this letter is the first from this place — since the month of March last — or I should before have done myself the honour to write to you — altho I had nothing material to communicate — This barrenness of events still continues, with the exception of such as come under my notice as Superintendent of Indian affairs & these as has been the custom will be detailed to the Secretary of War.

The Secretary of this Terretory will transmit you a Copy of our proceeding from the commencement of the Government to the 4th Instant, & a Copy of the Laws — adopted by the Governor and Judges during the last Winter — The expence of print — laws adopted in the Territory has usually been borne by the United States, & I believe that part of the Contingent money voted annually by Congress is intended for this purpose — If I am correct will you pleas to inform me, Sir, whether it will be done under your direction at the seat of Government, or will you authorise me to employ some one of the printers in Kentucky to do this and other trifling articles in the Printing line — Such as land Patents, Civil and Military Commissions &c — The Citizens of the Territory suffer great inconvenience for the want of Printed Laws — & I shall shortly be ready to issue Patents for such of the land claims as have not been decided on by the former Governor — My proceeding on this subject shall be transmitted to you as it is brought to a close — which I hope to be able to effect in the course of one year from the present time — My labour in this business would be much lightened and the chance of making blunders rendered much less; If I could procure from Governor St. Clair certain Records in his possession, which exclusively relate to the land business in this Country — I have enclosed an extract of his answer to my application for these papers — in which he declares he does not think himself authorised to deliver them, without an order for that purpose from the President.

I am with respect &c

The family of Doctor James McHenry placed his papers in my hands over ten years ago, for use in preparation of his biography, which was published in 1907. Among the manuscripts not used for that book are the two letters to him from Uriah Tracy which now appear. McHenry was secretary of war from 1796 to 1800 and Tracy, who was a member of the United States senate from Connecticut and was president *pro tempore* of that body, had travelled to the west to investigate the conditions on the northern frontier. Thence he wrote these two letters, which

have the interest of personal communications and yet also have somewhat of the importance of official reports.

BERNARD C. STEINER

TRACY TO MCHENRY, NOVEMBER 26, 1800

CITY OF WASHINGTON 26th Novr. 1800

MY DEAR SIR —

I returned from my western tour, some days since, but a press of business has prevented me from writing to you.

After seeing you in Baltimore, I proceeded to Pittsburg in Pennsylvania, where a bilious fever attacked and detained me for nearly five weeks — Altho' weak — my journey thro' the Indian Country as it is called to Presq' Isle was performed in a little time, and proved very healthful.

From Presq' Isle I proceeded to fort Erie and Niagara. — after viewing all matters & things proper to be viewed on both sides of the River and returning to fort Erie, we sailed up the Lake and reached the mouth of the Strait called D'Eetroit with a great deal of what sailors call good luck. — In proceeding up this strait the eye is presented with a landscape superior to any I ever beheld. — On both sides of the water are high banks, well cultivated, houses near each other, and every kind of fruit in abundance and perfection. The produce evinces a good soil, and from 6 to 10 windmills will at the same time grind the corn & offer battle to any Quixote, who dares to attack them. — From D'Eetroit into Lake St. Clair and up St. Clair River to Lake Huron — the prospect & appearance is beautiful, but fewer houses & less cultivation, as you make progress Northward.

The island of Michilimacinae is in itself a natural and great curiosity; but when the Fort, and Town are brought in sight by sailing up the strait which connects Huron & Michigan, it looks like Fairy Land. — It would consume too much of your time to give you a history of my whole journey especially as I shall soon see you on my way home.

Please to present me most respectfully to Mrs. McHenry & family — and believe me Yours respectfully

yr. friend

URIAH TRACY

HONBLE J. MCHENRY Baltimore

N. B. Please to write me.

TRACY TO MCHENRY, NOVEMBER 28, 1800

CITY OF WASHINGTON 28th Novr. 1800.

MY DEAR SIR

A line I put into post office yesterday was nothing more than an apology for a letter and scarcely that. — I find the several Forts Fay-

ette, Franklin, LeBoeuf and Presque Isle, I find in better order than I expected — Niagara is an important Post — much out of repair yet, tho' Rivardi has done wonders, with his means, towards repairing it. — I am very doubtful whether it will be best to repair anything more; as the Fort on the British side called Fort George, commands our so compleatly, that in an hour they could knock it about our ears — and on our own side in a diff't. place, we can erect and maintain a Fort more advantageously, in every sense of the word. — D'Etroit is in a condition not by any means pleasant. — The Fort is a kind of shadow of the Town, and if assailed, not only the assailants but defenders must batter the Town to pieces of course. — The whole Town is picketed in, which is not only expensive, in the first instance, but extends the guards beyond all hearing, and so very thickly placed are the Houses, that a single fire must reduce the Town & citidal as it is called beyond all human means of extinguishment; they having no engine, nor any particular means of conveying water.

The Soldiers not only in all the Forts already mentioned but in Michilimacinae, are in good order well clad, and healthy, with a single exception of Presq' Isle. This great Fort, has in it a Sergt. and Corporal with 10 or 11 privates, all sickly and always will be — as it is located on the only bad marshy neighborhood, there is for 300 miles on the South shore of Lake Erie. I am told this is the handy work of Rochfontaine an Engineer, who has not long been discharged from our service.

The Fort at Michilimacinae is the best, and much the most important fortress which the United States possess on our northern Frontier, and must I think receive an augmentation of Troops, a Lieut. and 30 men only are now, and have been the garison for a great length of time. — The western world is immensely important to the Union — much more so than I expected to find it. One Fact I am happy in finding compleatly proved and that is, that supplies etc. etc. which depended on the vigilance and activity of the War Office, have been in all instances, excepting one, satisfactory.

This one exception, I am conscious, will not apply in full force as an omission of the War-Office — It is the forwarding of Indian good and presents The Qr. Master has never yet had them on in time, and uniformly damaged in a great degree. This you will notice, I do not attribute to your neglect, but it will be attributed to the office which has the nominal managemt. of it — I am called off by other matters — excuse this — and likewise excuse the repetition of my letters.

Yrs respectfully,

URIAH TRACY

HONBLE JAMES MCHENRY Baltimore Maryland.